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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: MAY 09 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a staff research associate. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for the classification sought, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel submits a brief. For the reasons discussed below, the AAO upholds the director's determination that the petitioner has not established his eligibility for the benefit sought.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --
>
> > (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of job offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Bachelor of Medicine from Tongji Medical University and a Master of Science from Qingdao University's Medical College. The petitioner submitted an evaluation equating this education to a Doctor of Medicine Degree and a Master of Science Degree in Medical Science. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of the phrase, "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215, 217-18 (Comm'r. 1998) (hereinafter "NYSDOT"), has set forth several factors that U.S. Citizenship and Immigration Services (USCIS) must consider when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, the petitioner must show that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. *Id.* at 219. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The AAO uses the term "prospective" to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative. *Id.*

The AAO concurs with the director that the petitioner works in an area of intrinsic merit, neurobiology, and that the proposed benefits of his work, improved understanding of learning and memory, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, U.S. Citizenship and Immigration Services (USCIS) generally does not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *NYSDOT*, 22 I&N Dec. at 218. Moreover, it

cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, the AAO notes that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

The petitioner submitted evidence that he is a member of the Society for Neuroscience (SFN). Professional memberships are one type of evidence that may be submitted to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(E). Because exceptional ability, by itself, does not justify a waiver of the alien employment certification requirement, arguments hinging on professional memberships, while relevant, are not dispositive to the matter at hand. *Id.* at 222. The record contains no evidence that SFN membership is indicative of an influence in the field.

The petitioner also submitted eight published articles and a manuscript in press. Only three of the published articles relate to the petitioner's current research on synapses. The article in press had yet to appear in print as of the date of filing, the date as of which the petitioner must establish his eligibility. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). On appeal, counsel asks that the AAO "identify a rule of law or rule of regulation that has set up a specific number of citations that will be accepted as evidence to prove impact on a field of endeavor." As implied by the request, no such statute or regulation exists. That said, it is the petitioner's burden to demonstrate his influence in the field. Notably, the Department of Labor's Occupational Outlook Handbook, (OOH), available at http://www.bls.gov/oco/ocos047.htm#training (accessed May 5, 2011 and incorporated into the record of proceeding), provides that a solid record of published research is essential in obtaining a permanent position in basic biological research. While publication may demonstrate dissemination of the petitioner's work, publication alone does not establish the ultimate influence of that work. The petitioner must establish the ultimate impact of his publications. In considering the evidence, the AAO looks not only to citations but the evidence of record as a whole.

In response to the director's request for additional evidence, the petitioner submitted evidence that his 2008 article in *Current Biology* had garnered four citations, three of which postdate the filing of the petition. The petitioner also submitted evidence that his 2007 article in the same journal had garnered nine citations. Four of these citations are self-citations by the petitioner or a coauthor. While self-citations are a normal and expected practice, they cannot establish the petitioner's influence beyond his immediate circle of collaborators. Of the five remaining independent citations, only one lists a copyright date earlier than 2009. The petitioner filed the petition on March 23, 2009.

The petitioner has not established that any of the four independent articles citing his work in 2009 predate the filing of the petition. The AAO will not consider any citations that postdate the filing of the petition. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

All of the case law relating to establishing eligibility as of the priority date focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that his recently published research will subsequently prove influential. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008).

In light of the above, the record establishes that, as of the date of filing, two of the petitioner's articles had garnered one independent citation each. While there is no particular number of citations that is persuasive, two articles having garnered one citation each is not a citation record that, by itself, is indicative of an influence on the field as a whole.

On appeal, counsel asserts that the director did not give sufficient weight to the review articles in the record. Initially, the petitioner submitted a Research Highlight in *Nature Reviews Neuroscience* that reports on the petitioner's article in *Current Biology.* The petitioner submitted evidence about *Nature Reviews Neuroscience* from *Wikipedia.* With regard to information from *Wikipedia,* there are no assurances about the reliability of the content from this open, user-edited internet site.[1] *See Lamilem Badasa v. Michael Mukasey,* 540 F.3d 909 (8th Cir. 2008). The petitioner also submitted information about the journal from its own website. This information reveals that the journal publishes Research Highlights, Progress, Reviews, Analysis and Perspectives. The journal publishes approximately 10 Research Highlights each month "along with 6-10 'In Brief' items that provide a concise description

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[1] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on May 5, 2011, a copy of which is incorporated into the record of proceeding.

of an additional group of significant papers." The in-house editorial journal team authors these highlights. Significantly, Progress Articles focus on "current papers of outstanding interest that are setting new standards in the field." The journal reviewed the petitioner's work in a Research Highlight rather than a Progress Article.

The petitioner also submitted a review in *Current Biology* also reviewing the petitioner's earlier article in that publication in addition to other articles analyzing sensorimotor synapses. The review confirms that the petitioner's work was novel and challenged previous sensorimotor synapse models. The review, however, appears in the same issue of *Current Biology* as the petitioner's follow up to the article discussed in the review. It appears that the journal was merely placing the petitioner's work in the context of his earlier work.

Finally, the petitioner submitted an article in *Science Daily* that quotes the petitioner's supervisor, [redacted], at length about his research on memory and learning by studying sea snails. The article notes that he has been pursuing such research for 25 years. The article mentions the results [redacted] the petitioner and others reported in *Current Biology* but does not name any researcher other than [redacted]

The above reviews demonstrate that editors deemed the research in which the petitioner participated as promising. Any research, however, in order to be accepted for publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. These reviews do not demonstrate the ultimate impact of the petitioner's research.

The record establishes that the petitioner has experience with certain techniques. [redacted] or the petitioner's employer, the University of California, Los Angeles (UCLA), asserts that the petitioner works there as [redacted] at a salary of $39,468 and that his responsibilities include "making cell culture, performing electrophysiological experiment, analysis of experimental records, immunostaining and image analysis, and preparation of scientific figures and manuscript."

[redacted] affirms that the petitioner "has mastered a wide variety of the experimental methodologies of neuroscience, including electrophysiology, the fabrication of primary cell cultures of neurons, pharmacological techniques, microinjection of neurons, immunohistochemistry and cell imaging." [redacted] then concludes that the petitioner's combination of skills, "although unusual, is critical for cutting edge research in the field of modern neuroscience." Simple training in advanced technology or unusual knowledge, while perhaps attractive to the prospective U.S. employer, can be articulated on an application for alien employment certification and does not inherently meet the national interest threshold. *NYSDOT,* 22 I&N Dec. at 221.

The remaining evidence consists of reference letters. While some of the references provide details about their credentials, they did not include their curriculum vitae. On appeal, counsel asserts that the director did not give sufficient weight to these letters. The AAO will address these letters at length.

[redacted] of the [redacted] asserts that the petitioner studied gene therapy for oral tumors at the Affiliated Ninth People's Hospital of Shanghai Jiao Tong University's School of Medicine. [redacted] explains that the petitioner '[redacted] synergistically inhibited the tumor growth of tongue squamous cell carcinoma." [redacted] states that this work "provided an attractive and innovative approach to the treatment of oral cancer" and that the petitioner received a [redacted] for this work. [redacted] provides no examples of hospitals or clinics treating oral cancer based on the petitioner's work and the record lacks the 2002 award. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'. Comm'r. 1972)). Moreover, the petitioner has not explained how this work relates to the petitioner's current research on synapses.

In addition to discussing the petitioner's technical skills, [redacted] provides information about the petitioner's research at UCLA. [redacted] explains that the petitioner focuses on long-term sensitization involved in long-term memory. [redacted] further explains that long term facilitation (LTF), a persistent enhancement of synaptic connections, is one of the cellular mechanisms that underlie long-term sensitization. [redacted] asserts: "Unexpectedly, [the petitioner] has discovered that changes in the postsynaptic neuron (the motor neuron) also plays a major role in LTF." More specifically, [redacted] states that the petitioner demonstrated that the increase in expression of the presynaptic neuropeptide sensorin, critical to LTF, is regulated by postsynaptic calcium.

[redacted] next discusses the petitioner's work with intermediate-term facilitation (ITF). [redacted] explains that unlike LTF, ITF does not involve gene transcription and, thus, does not persist for more than a few hours. [redacted] states that the petitioner "and his colleagues" demonstrated that ITF requires rapid protein synthesis within processes of the postsynaptic motor neuron.

In addition, according to [redacted] the petitioner "and his colleagues" investigated the role of "postsynaptic PKC to 5-HT-inducedsynaptic facilitation." [redacted] further states that the petitioner "has shown that long-term neuronal hyperexcitability – another learning-related cellular mechanism of plasticity – which can be induced in [the sea snail (*Aplysia*)] sensory neurons by serotonin, also depends on a signal from the postsynaptic motor neurons." Finally, [redacted] asserts that the petitioner "and his colleagues" used a used a single-cell model to demonstrate the importance of growth factors and protein kinases in producing long-term changes in neuronal excitability.

Dr. Glanzman concludes:

> The research findings of [the petitioner], summarized above, are of critical importance for our understanding learning and memory, and represent ground-breaking, creative work. [The petitioner's] exciting discoveries have yielded new insights into the mechanisms of learning- and injury-related neural plasticity, and will stimulate new experiments and ideas in the field, such as the involvement and identification [of] the retrograde signal(s) that [are] involved in LTF.

[redacted]hen lists the petitioner's publications and presentations and further concludes that the petitioner's findings "will advance our understanding of the basic cellular mechanisms of learning and memory in the human brain" that will subsequently lead to new treatments for age and disease related memory loss. [redacted]predictions about the petitioner's future influence in the field are highly speculative. [redacted]does not explain how the petitioner's work is already being applied by independent laboratories.

In a second letter, [redacted] asserts that the petitioner contributed to [redacted]successful grant application under the American Recovery & Reinvestment Act. [redacted] asserts that only four percent of applications were funded under this program. [redacted] also notes a second grant application with the National Institute of Mental Health (NIMH) that scored well but not high enough for funding. Not every alien working with a government grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. At issue is the ultimate impact of the research once completed and disseminated.

The petitioner also provided a very similar letter from [redacted] another professor at [redacted]. also fails to provide examples of independent laboratories using the petitioner's results. Rather, he concludes generally that the petitioner's findings "are of utmost importance for our understanding of learning and memory and its disorders." USCIS need not accept primarily conclusory assertions.[2]

[redacted]a professor at the [redacted]who previously performed his doctoral research in [redacted]aboratory, provides similar detail regarding the petitioner's various investigations. [redacted] asserts that the petitioner had three manuscripts in preparation. As the petitioner had yet to publish this work, it cannot demonstrate his eligibility as of the date of filing. [redacted]otes the petitioner's most recent research and states that "these findings might eventually be exploited to identify therapeutic targets that would be relevant to neuronal injury in the vertebrate central nervous system." This statement, however, is highly speculative.

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[2] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

[redacted], an assistant professor at the [redacted] provides a similar description of the petitioner's work as that provided by [redacted] concludes (grammar as it appears in the original):

> These creative, ground-breaking works are utmost importance and represent new advance in the field of learning and memory. The research findings of [the petitioner] will advance our understanding of the basic cellular mechanisms of learning and memory in all brains, including human brains.

[redacted] then predicts that the research community's improved understanding will lead to treatments for Alzheimer's Disease. [redacted] statements are highly speculative and fail to explain how independent research teams are already applying the petitioner's work. [redacted] does not suggest that the petitioner's work has influenced Dr. Ming's research.

[redacted] asserts that he learned of the petitioner's work while editing a bulletin. [redacted] description of the petitioner's work on LTF and ITF is almost verbatim the description [redacted] provides. [redacted] concludes that the petitioner's work on ITF has "attracted significant attention." [redacted] example is the review that also appeared in *Current Biology* placing the petitioner's new article in that journal in the context of his previous work. [redacted] does not explain how this single review constitutes "significant attention." [redacted] concludes:

> [The petitioner's] work has provided novel insights into learning-related plasticity and formed a basis for the design of therapeutic agents to treat a variety of diseases that affect memory, such as age-related memory loss, as well as a number of neuropsychiatric disorders, including anxiety disorders and post-traumatic stress disorder."

[redacted] then asserts that the petitioner enjoys international recognition and acclaim. The benefit sought does not require international recognition or acclaim. Nevertheless, if [redacted] is going to advance such as claim, he should provide credible support for the assertion. The record, however, does not support a finding that the petitioner enjoys international recognition and acclaim. While [redacted] appears to be an independent witness, he does not affirm having ever applied the petitioner's work in his own work.

Finally, [redacted] an [redacted] asserts that he learned of the petitioner's work while attending his presentation at a national meeting. [redacted] asserts that "there is a severe shortage of individuals trained in cellular electrophysiology." As stated above, the issue of whether similarly-trained workers are available in the U.S. is an issue under the jurisdiction of the Department of Labor. *NYSDOT*, 22 I&N Dec. at 221. More specifically, [redacted] asserts that the petitioner's work on LTF "forces us to rethink our models of how neurotrophin signaling and synaptic modification function during learning." [redacted] further

asserts that the petitioner's work on excitability "has necessitated a reevaluation of a decades-old model of how excitability is determined in these neurons." [redacted] explains that the petitioner's work is "at a very basic level" but that the greater understanding resulting from his work has "great potential for the development of drugs that play vital roles clinically." [redacted] does not identify a pharmaceutical company that is contemplating new research based on the petitioner's discoveries. [redacted] does not assert that he is applying the petitioner's work.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as the AAO has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of the significance of the petitioner's findings without providing specific examples of how those innovations have influenced the field. Merely repeating the legal standards does not satisfy the petitioner's burden of proof.[3] The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Ultimately, the petitioner, a staff research associate, had authored three articles on synapses as of the date of filing, none of which had garnered significant citation as of that date. While the reference letters and reviews suggest that the petitioner's work is novel and has potential, the record does not document a past history of demonstrable achievement with some degree of influence on the field as a whole. *See NYSDOT,* 22 I&N Dec. at 219, n.6.

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[3] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.